

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

)
) MDL No. 1456
) Master File No. 1:01-CV-12257-PBS
) Sub-Category Case No. 1:08-CV-11200
)

THIS DOCUMENT RELATES TO:

*United States ex rel. Linnette Sun and
Greg Hamilton, Relators*

v.
Baxter Healthcare Corporation

)
)
) Judge Patti B. Saris
)
)

**BAXTER HEALTHCARE CORPORATION'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules for the United States District Court for the District of Massachusetts, defendant Baxter Healthcare Corporation ("Baxter"), by and through its attorneys, respectfully moves this Court to grant an Order for Partial Summary Judgment in favor of the Defendant as to the Baxter therapies Advate and Recombinate in the sole remaining FCA count¹ in Relators' Second Amended Complaint, filed August 13, 2010, Subcategory No. 1:08-cv-11200, Subcategory Doc. No. 102, for the reasons stated in the attached Memorandum in Support.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Baxter believes oral argument may assist the court in resolving these issues and therefore requests a hearing at such time as the court determines.

A proposed order is attached for the Court's convenience.

¹ If this motion is granted, the only surviving counts (Counts IV, V, VI, XXII, and XXIII) will relate to Sun's retaliation and employment discrimination claims.

Dated: October 19, 2011

Respectfully submitted,

/s/ Shamir Patel

J. Andrew Jackson

Merle M. DeLancey

Shamir Patel

DICKSTEIN SHAPIRO LLP

1825 Eye Street NW

Washington, DC 20006

Telephone: (202) 420-2200

Facsimile: (202) 420-2201

Admitted pro hac

Peter E. Gelhaar (BBO #188310)

DONNELLY, CONROY & GELHAAR, LLP

One Beacon Street, 33rd Floor

Boston, MA 02108

Telephone: (617) 720-2880

Facsimile: (617) 720-3554

Counsel for Defendant Baxter Healthcare
Corporation

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

I certify that the moving party has communicated with counsel for Relators in an effort to resolve the dispute referred to in this Motion, and that the parties have not been able to reach agreement with respect thereto.

/s/ Shamir Patel
Shamir Patel
DICKSTEIN SHAPIRO LLP
1825 Eye Street NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201

CERTIFICATE OF SERVICE

I hereby certify that I, Shamir Patel, an attorney, electronically filed the foregoing BAXTER HEALTHCARE CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT with the Clerk of the Court for the District of Massachusetts using the Court's CM/ECF system on October 19, 2011. I also caused a true and correct copy of the foregoing document to be delivered to all counsel of record by electronic service via LexisNexis File & Serve, for posting and notification to all parties.

/s/ Shamir Patel
Shamir Patel
DICKSTEIN SHAPIRO LLP
1825 Eye Street NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201